



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

June 6, 1962

Honorable Jerry Dellana      Opinion No. WW-1343  
County Attorney  
Travis County Courthouse      Re: Legality under Article 654,  
Austin, Texas                      V.P.C., of giving a valuable  
   prize by means of a drawing  
Dear Mr. Dellana:                      under the facts submitted.

You have requested an opinion as to the legality under Article 654 of Vernon's Penal Code of a plan described by you as follows:

"Facts: A merchant desires to give away a central air-conditioning unit at the opening of a new store and office; it is not necessary for the registrant to be present to win nor to buy anything from the store to register, but limits the registrants to the following:

- "1. That only one member of a family may register at one time.
- "2. That the registrant own a home in Travis County, Texas.
- "3. That the unit will be installed in a single family residence only, the condenser being not less than two ton capacity and not greater than five ton capacity.
- "4. That no employees or their immediate family may participate."

Article 654, Vernon's Penal Code, prohibits the establishment and operation of a lottery, and the disposition of property by lottery, but does not define a lottery. The courts have, therefore, adopted a definition based upon the term "lottery" and it is well established that three things must occur to constitute an advertising scheme a lottery and these are: (a) A prize or prizes; (b) the award or distribution of the prize or prizes by chance; (c) the payment, either directly or indirectly, by the participant of

a consideration for the right or privilege of participating. Cole v. State, 112 S.W.2d 725 (Tex.Crim.1937), Brice v. State, 242 S.W.2d 433 (Tex.Crim. 1951), Smith v. State, 1274 S.W.2d 297 (Tex.Crim. 1939).

Assuming the facts as you have given them, it is clear that no purchase must be made to become eligible to win the prize if selected, hence there is no consideration paid by the participant. The Court of Criminal Appeals in Brice v. State holds that the going into a store and registering does not constitute the payment of consideration, even though the donor may receive a benefit from the drawing in the way of advertising. Such being the case, in our opinion this plan is not a lottery because of the lack of consideration.

#### S U M M A R Y

The advertising plan does not constitute a lottery under the facts submitted because of the absence of consideration.

Yours very truly,

WILL WILSON

Attorney General of Texas

By *Charles R. Lind*

Charles R. Lind

Assistant Attorney General

CRL:sh

APPROVED:

OPINION COMMITTEE:

W. V. Geppert, Chairman

Pat Bailey

Vernon Teofan

Jay Howell

Milton Richardson

REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore